



CITY COUNCIL

Committee of the Whole

Monday, June 22, 2009

Council Office

5:00 pm

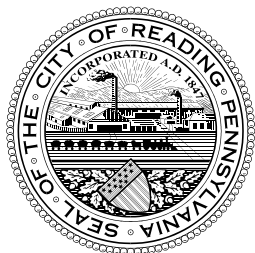
Agenda

- I. Amendment to Code of Ethics** **5:00 pm**
- adding a provision regarding fraud

II. Discussion – Fee Increases

- a. Planning revenue at current rates - \$52,390 and revenue at the rate recommended by Maximus - \$168,131
- b. Zoning revenue at current rates \$113,400. and revenue at the rate recommended by Maximus - \$157,330
- c. Codes revenue at current rates \$262,452 and at the rate recommended by Maximus - \$1,349,188 (*NOTE: the Maximus report only considers the 3000 housing permits issued in 2007, not the approx 7000 permits that codes issued this year to date.*)

- III. Agenda Review** **6:30 pm**



COMMITTEE of the WHOLE

CITY COUNCIL

MINUTES
June 8, 2009
5:00 P.M.

COUNCIL MEMBERS PRESENT:

D. Sterner, M. Goodman-Hinnershitz, S. Marmarou, J. Waltman, S. Fuhs, V. Spencer

OTHERS IN ATTENDANCE:

L. Kelleher, S. Katzenmoyer, R. Hottenstein, C. Heminitz, W. Bealer, J. Lillis, C. Younger

Mr. Spencer, President of Council, called the Committee of the Whole meeting to order at 5:04 p.m.

I. MUNICIPAL PERFORMANCE BOND – READING PARKING AUTHORITY

Mr. Lillis stated that the Parking Authority has had land development improvements at 7th & Penn Streets approved by the City. He stated that the performance bond will cost approximately \$75,000. He requested that Council waive the posting of the security bond for these projects. He stated that the resolution before Council this evening was based on the resolution recently passed by Council waiving the bond requirement for Our City Reading.

Mr. Younger stated that Ms. Mayfield approves of the waiver.

Mr. Hottenstein stated that the Administration approves of the waiver.

Mr. Marmarou questioned if the Parking Authority was required to post the bond for past projects. Mr. Lillis stated that Ms. Mayfield is now enforcing the posting of the bond and stated that Council may grant a waiver as they have done for Our city Reading.

Mr. Spencer stated his belief that the waiver should be granted as this is a City project and not a private developer.

Mr. Bealer stated that the Planning Commission did not enforce the bond prior to their gaining legal assistance. He stated the reason behind the bond requirement and that the Planning Commission supports waiving this bond.

Mr. Spencer stated that this resolution is on this evening's agenda for action.

II. SIDEWALK VENDING ORDINANCE/VENDING MACHINES

Mr. Bealer stated that he has been appointed as Chair of the Vending License Board. He stated that the sidewalk vendor ordinance states that ten licenses for vending machines are to be issued annually. The ordinance does not provide any other guidelines. He stated that the DID Ambassadors completed an inventory of downtown vending machines and there are 28 vendors and 158 machines. He stated that the Board would like Council's guidance and direction on this issue. He made several suggestions including:

- Remove vending machines from the ordinance and do not control them
- Add regulations regarding vending machines to this ordinance
- Add regulations on the locations of vending machines
- Ten licenses may mean ten machines or it may mean ten owners with multiple machines

Mr. Younger stated that vending machines are also covered in the Health Code. Ms. Kelleher noted that there can be right of way issues.

Mr. Bealer stated that enforcement of the ordinance and the way the machines are secured in their locations are other issues to be resolved.

Mr. Waltman questioned if Council was the best place to work on these issues. Mr.

Bealer noted his willingness to work with codes on this issue.

Mr. Fuhs reminded all of the Downtown 2020 plan.

Mr. Spencer stated his belief that the intent of the ordinance is to minimize vending machines in the downtown area.

Mr. Fuhs stated the need to set a limit. He stated his belief that these machines add to the litter problem. He stated that downtown needs to be clean to accomplish the Downtown 2020 vision and that there should be no vending machines on Penn St. Mr. Bealer stated that Mr. Broad holds these same beliefs.

Mr. Bealer will report back to Council with recommendations to move forward.

III. AGENDA REVIEW

Council discussed this evening's agenda including:

- Resolution authorizing the Mayor to sign and submit an application for the US Department of Energy Efficiency and Conservation Block Grant program

Mr. Hottenstein stated that the City would be receiving \$791,000 to use for street and pedestrian lighting.

Mr. Spencer questioned the time frame in which the money needs to be spent. Mr. Hottenstein replied that it was one year.

Mr. Spencer questioned if this grant could be used to install solar energy panels for City buildings. Mr. Hottenstein stated that it is allowable.

Mr. Spencer questioned if Public Works would support this initiative. Mr. Hottenstein stated that they do not.

- Resolution authorizing Council to testify at the June 10th Zoning Hearing Board meeting regarding quality of life issues

Mr. Spencer questioned the need for this resolution.

Mr. Marmarou questioned if, when appearing, you should represent yourself as an

individual or a Councilor. Ms. Kelleher stated that Mr. Fuhs has volunteered to attend Zoning Hearing Board meetings. She stated that Ms. Mayfield advised her that this resolution is necessary.

Mr. Fuhs stated that the Zoning Hearing Board is quasi-judicial and are taking testimony.

Mr. Waltman stated that if Council's opinion as a whole is being stated it would be unlikely Council would have the time to prepare a statement on each application. He stated his opinion that statements must be made individually.

Mr. Fuhs stated that he always considers himself a Councilor when making statements to any City board, authority or commission.

Mr. Sterner stated that the Zoning Hearing Board listens to testimony and makes their decision independently.

Ms. Kelleher stated that the applicant's attorney can question the standing of Council members when testifying.

Mr. Fuhs stated his concern that this would set a precedent. He stated that testimony should be allowed in any case.

- Award of Contract to Fox Rothschild as legal counsel to negotiate inter-municipal agreements for sewer services

Mr. Hottenstein stated that the RFP process was followed and the Administration recommends moving forward with this contract award.

Mr. Fuhs questioned who, locally, would represent the City. Mr. Hottenstein stated that it would be John Maravich.

Council entered into executive session to discuss litigation at 5:41 pm. They exited executive session at 6:02 pm.

- Ordinance amending Motor Vehicles and Traffic by eliminating the fee for parking permits for funeral homes

Mr. Waltman stated that this has become a debate of principles. He stated his hope that people be allowed to pass quietly from life.

Mr. Marmarou questioned how many signs would be allowed. Mr. Waltman stated that it would be as many as necessary.

Mr. Marmarou questioned when the signs would be posted. He stated that this requirement should be included in the ordinance. Ms. Katzenmoyer stated that this requirement is included.

Mr. Marmarou stated that this will cause more problems than it will correct.

Mr. Sterner stated that funeral homes should consider this a business expense. He stated that he will not support the ordinance because other groups will also lobby to become exempt. He stated that this ordinance is the result of one person's complaints and was not a problem in the past.

Mr. Waltman stated that politics has recently become involved in this issue.

Ms. Kelleher stated that the fees have been charged for the past ten years.

- Ordinance amending Historic Districts to regulate the placement of satellite dishes and other modern devices and accessories

Mr. Fuhs stated that the FCC allows this regulation in historic districts. He questioned if it could be applied City-wide. Ms. Kelleher stated that it could not.

Mr. Hottenstein questioned if the one year period to relocate the satellite dishes and other devices was required. Ms. Kelleher stated that the FCC requires ample time to relocate existing dishes.

Mr. Waltman stated his belief that one year was too long. Ms. Kelleher stated that Ms. Johnson and the HARB may not be able to process the requests in less than one year.

Mr. Spencer stated concern that this ordinance does not grandfather existing satellite dishes but other ordinances always grandfather existing conditions. He stated that other ordinances should also require action, especially on large, important issues.

Mr. Waltman stated his belief that these devices do not belong in plain view in historic districts.

Mr. Hottenstein stated that the Administration supports the one year period.

Ms. Goodman-Hinnershitz stated that moving the items may not be possible as the signal may be lost.

Mr. Waltman stated that these issues are then brought to the HARB for approval to remain with an approved covering.

Mr. Sterner voiced his support for the one year period.

Mr. Spencer questioned if HARB supported the one year period. Mr. Waltman stated that they did.

Mr. Jones joined the meeting at this time.

- Ordinance authorizing an easement to the Water Authority for a parcel along River Rd

Mr. Spencer questioned where the parcel was located along River Rd. Mr. Jones stated that it was south of the East Bank development between Buttonwood St and Washington St.

Mr. Waltman questioned why the easement was necessary. Mr. Jones stated that it was for improvements to the 18th Ward pumping station.

Mr. Waltman questioned if the river would be affected. Mr. Jones stated that the River will not be affected.

It was noted that two resolutions need to be added to this evening's agenda – an additional Main St resolution and the tax exoneration for Mr. and Mrs. Krauthauser.

IV. OTHER BUSINESS

Ms. Kelleher reported that five citizens were scheduled to speak on the possible six pet limit per household and the exotic animal fee.

Mr. Waltman questioned what the Administration was planning for the budget shortfalls for 2009. He stated that the Finance Committee was told that an accounts receivable or accounts payable consultant would be brought in to review these issues. He stated that he has heard whisperings that the Administration is planning to enter

Act 47. He requested that the Administration be in communication with Council in this regard.

Mr. Hottenstein stated that the Administration is reviewing the 2009 budget shortfalls and will bring amendments forward as necessary. He stated that the 2010 budget will need to address major issues. He stated that Act 47 is one option that the Administration is reviewing. He stated that the pros and cons need to be known as this is an important decision. He stated that the Administration would communicate with Council on this issue.

Mr. Waltman stated his belief that if some are aware that the City will enter Act 47 and Council does not that it undermines the entire City. He questioned if the Administration is working on activities specific to Act 47 and what their current plan is.

Mr. Fuhs requested that Act 47 be placed on the Finance Committee agenda for monthly review. He stated Council's need to also be aware of the pros and cons. Mr. Hottenstein stated his willingness to discuss this issue.

Ms. Goodman-Hinnershitz stated that all are aware of the financial problems of the City. She stated that discussions to date have spurred rumors. She stated that some preliminary discussions have occurred but that it is time for specifics.

Mr. Marmarou described a situation in which a resident of Muhlenberg stated that layoffs will be occurring due to the City's entering Act 47. Mr. Hottenstein stated that rumors cannot be controlled.

Mr. Fuhs requested that if the Administration is working on a plan to enter into Act 47 that it must be addressed with Council.

Mr. Spencer stated that Council also needs to be prepared. He stated that Council should understand the benefits, pitfalls and what is hoped to be achieved by entering Act 47.

Mr. Waltman stated his belief that Act 47 may not be the only way out of the crisis.

Mr. Fuhs agreed and stated that the Finance Committee needs to stay focused on this issue. He stated that the Management Partners report of 2006 and the PEL Five City Study of 2009 both point the City to Act 47. He stated that problems with tax exempt properties and the lack of a reassessment also add to the City's problems.

Mr. Waltman again stated that Act 47 is not the only solution. Mr. Hottenstein stated that the Administration does not have a firm plan but that they are formulating one.

Mr. Waltman requested that this plan be shared with Council.

Mr. Spencer questioned why other cities such as Allentown and Harrisburg are not entering Act 47. Mr. Hottenstein suggested that all of Council review the PEL Five City Study of 2009 prior to the budget summit on June 20. He stated that all five of these cities are heading in the same direction as Reading.

The meeting adjourned at 6:47 pm.

Respectfully Submitted
Linda A. Kelleher, CMC
City Clerk

BILL NO. ____2009

AN ORDINANCE

AMENDING THE CITY OF READING CODIFIED ORDINANCES BY ADDING PROVISIONS TO ADDRESS FRAUDULENT BEHAVIOR.

THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Amending the City of Reading Codified Ordinances, Chapter I, Administration and Government, Part I, Administrative Code, Subpart J, Code of Ethics, Section 6, Prohibited Behaviors, Subsection 1-199.16 as attached in Exhibit A.

SECTION 2. All relevant ordinances, regulations and policies of the City of Reading, PA, not governed by the Code shall remain in full force and effect if not repealed by enacted legislation.

SECTION 3. If any section, subsection, sentence, or clause of this ordinance is held, for any reason, to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 4. This Ordinance shall become effective in ten (10) days in accordance with Charter Section 219.

Enacted _____, 2009

President of Council

Attest:

City Clerk

Exhibit A

TABLE OF CONTENTS

Section 1. Declaration of Policy	Page 4
A. Public Office as a Public Trust	Page 4
B. Independent Objective Judgment	Page 4
C. Accountability	Page 4
D. Democratic Leadership	Page 4
E. Respectability and Fitness for Public Office	Page 4
Section 2. Board of Ethics	Page 5
A. Composition and Structure of Board	Page 5-6
B. Powers and duties	Page 6
C. Prohibitions	Page 6-7
D. Preservation	Page 7
Section 3. Definitions	Page 8-9
A. Appearance of Impropriety	Page 8
B. Board	Page 8
C. Candidate	Page 8
D. Charter	Page 8
E. Code	Page 8
F. Conflict of Interest	Page 8
G. Elected Official	Page 8
H. Employee	Page 8
I. Immediate Family	Page 8
J. Material Interest	Page 8
K. Officer	Page 8
L. Official	Page 8
M. Political Activity	Page 9
N. Private Gain	Page 9
O. Violation	Page 9
Section 4. Statement of Financial Interest	Page 9
Section 5. Disclosure of Confidential Information	Page 9
Section 6. Prohibited Behaviors	Page 10
A. Conflicts of Interest	Page 10-11
B. Solicitation/Acceptance of Gifts; Rebuttable Presumption	Page 11
C. Nepotism	Page 12
D. Whistle Blowing	Page 12
E. Use of City Property and Personnel	Fraudulent
Activity	Page 12-13

F.	Political Activities <i>Use of City Property and Personnel</i>	
Page	12 13	
G.	<i>Political Activities</i>	Page
	12 13	
Section 7.	Penalties; Restitution.....	Page
		13 14
A.	Penalties.....	Page 13
	14 15	
B.	Restitution; Other penalties and remedies.....	Page 14 15
Section 8.	Advisory Opinions.....	Page
	15 16	
Section 9.	Complaint and Investigation Procedure.....	Page 15 16
A.	Who May File.....	Page 15
	16 17	
B.	How to File.....	Page 15
	16 17	
C.	Jurisdiction; Preliminary Investigation.....	Page
	16 17	
D.	Full Investigation.....	Page
	17 18	
E.	Findings Report.....	Page
	17 18	
F.	Evidentiary Hearing.....	Page
	17 18	
G.	Decision by the Board; Final Order.....	Page 18 19
H.	Petition for Reconsideration.....	Page
	18 19	
I.	Protection of Complainant.....	Page
	18 19	
Section 10.	Confidentiality of Board Information.....	
...	Page 18 19	
Section 11.	Wrongful Use of Board of Ethics.....	Page 18-
	19 19-20	

SECTION 1. Declaration of Policy

The proper operation of democratic government requires that public officials and employees be independent, impartial and responsible to the people; that government decisions and policy be made in the proper channels of governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government.

Each official or employee of the City must be constantly on guard against conflicts of interest. No official or employee should be involved in any activity which might be seen as conflicting with his/her responsibilities to the City. The people of Reading have a right to expect that their representatives act with independence and fairness towards all groups and not favor a few individuals or themselves.

The following principles, although not representing substantive rights, are fundamental driving forces for officials and employees of the City of Reading in everything they do¹:

A. **Public Office as a Public Trust.** Public servants should treat their office as a public trust, only using the powers and resources of public office to advance public interests, and not to attain personal benefits or pursue any other private interest incompatible with the public good.

¹Josephson Institute for the Advancement of Ethics, *Preserving the Public Trust*, 1990.

B. **Independent Objective Judgment.** Public servants should employ independent objective judgment in performing their duties, deciding all matters on the merits, free from avoidable conflicts of interest and both real and apparent improper influences.

C. **Accountability.** Public servants should honor and respect the principles and spirit of representative democracy and set a positive example of good citizenship by scrupulously observing the letter and spirit of laws and rules.

D. **Democratic Leadership.** Public servants should honor and respect the principles and spirit of representative democracy and set a positive example of good citizenship by scrupulously observing the letter and spirit of laws and rules.

E. **Respectability and Fitness for Public Office.** Public servants should safeguard public confidence in the integrity of government by being honest, fair, caring and respectful and by avoiding conduct creating the appearance of impropriety or which is otherwise unbefitting a public official. In recognition of these aforementioned goals and principles, there is hereby established a Code of Ethics to be administered by the Board of Ethics. The purpose of this Code is to establish ethical standards of conduct for all officials and employees of the City of Reading, its agencies and authorities, whether elected or appointed, paid or unpaid, by providing guidelines to clarify actions or inactions which are incompatible with the best interests of the City and by directing disclosure of private, financial or other interests in matters affecting the City. The provisions and purpose of this Code and such rules, regulations, opinions and disciplinary decisions as may be promulgated by the Board pursuant hereto, and under provisions of Article XII of the Charter, are hereby declared to be in the best interest of the City.

SECTION 2. Board of Ethics

Reference is made to Section 1201(c) of the Charter of the City of Reading.

A. Composition and Structure of Board.

1. **Composition.** The Board established under Section 1201 of the City of Reading Home Rule Charter shall be composed of five (5) residents of the City of Reading.

2. **Terms of Service.** Members of the Board shall serve for terms of three (3) years, except that members shall continue to serve until their successors are appointed and qualified. The terms of the initial members shall be staggered, with one member serving a term of one year, two members serving for two years, and two members serving for three years.

3. **Vacancy.** An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed for the unexpired term of the member he/she succeeds and is eligible for appointment thereafter according to the terms herein.

4. **Election of Chairperson and Vice Chairperson.** The Board shall elect a chairperson and a vice chairperson annually at a meeting held in July of each year. The vice chairperson shall act as chairperson in the absence of the chairperson or in the event of a vacancy in that position.

5. **Quorum.** A majority of the members of the Board shall constitute a quorum and, except as provided in Sections 9.C. and 9.D., the votes of a majority of the members present are required for any action or recommendation of the Board.

6. **Staff.** The Board shall appoint a solicitor, a secretary and such other staff as may be deemed necessary. The solicitor, secretary and such other staff as may be necessarily appointed need not be members of the Board.

7. **Meetings.** The Board shall meet at the call of the Chairperson or at the call of a majority of its members.

8. **Investigative Officer.** The Board shall appoint an investigating officer as set forth herein. The Board shall, from time to time, determine an amount to be paid as reasonable compensation to the investigating officer as payment for such services. The investigative officer shall be a member in good standing of the Berks County Bar and shall have so been for at least five (5) years. The investigative officer need not be a resident of the City of Reading and shall not be a Board member. The investigative officer is authorized to retain the services of investigators and may only delegate non-discretionary functions.

B. **Powers and duties:** The powers and the duties of the Board of Ethics may be summarized as follows:

1. Give advice as to the application of the ethics provisions of the Charter of the City of Reading and this Code of Ethics.

2. Receive and dispose of complaints of violations of the ethics provisions of the Charter and Code of Ethics, and exercise discretion in declining to pursue an investigation if such a course would be in the best

interest of the citizens of the City of Reading or where the activity
complained of amounts to no more than a de minimis violation.

3. Appoint an investigating officer to conduct investigations and to
issue findings reports where appropriate.

4. Hold hearings, issue subpoenas and compel the attendance of
witnesses, administer oaths, take testimony, require evidence on
any matter under investigation before the Board, and issue
orders, including but not limited to those related to adjudications and
penalties.

5. Conduct educational programs to promote the ethical conduct of
public officials, City employees, and individuals and groups doing
business with the City.

6. Adopt rules and regulations to administer, implement, enforce and
interpret the Code of Ethics.

7. Annually review the statements of financial interest filed pursuant to
Section 4 of the Code.

C. **Prohibitions.** Due to their special position, Board members have a higher
duty than other public officials to avoid conflicts of interest. Respect for
the Code can be maintained only if members are models of ethical
behavior. The prohibitions in this section are in addition to the duties,
responsibilities or obligations imposed upon the Board members as public
officials under other provisions of the Code.

1. No member may hold or campaign for any other public office.

2. No member may hold office in any political party or political
organization or political committee.

3. No member may hold a position of employment or appointment with
any municipal government or any board or commission formed
by the City of Reading.

4. No member may actively participate in or contribute to any political
campaign in the City of Reading for a candidate running for or from the
office of the Mayor, President of Council, Council Member, or
Auditor. This does not abridge the right of a member to vote or
attend a debate, speech or similar event that is held primarily
for the purpose of communicating a candidate's platform or position
on issues of public concern.

the City 5. No member shall receive compensation but shall be reimbursed by the City for documented expenses actually incurred.

- D. **Preservation.** Complaints and proceedings pending before the Board at the time this Code is adopted shall be preserved insofar as they are consistent with recent orders of the Court of Common Pleas of Berks County. The Board shall take any and all steps necessary to adjudicate all pending complaints so as to comply with said orders, including the establishment of a committee of Board members not previously involved in the disposition of said complaints to adjudicate and dispose of the same. Said committee shall consist of at least three (3) Board members and shall act with the authority of the Board in adjudicating said complaints and instituting penalties and restitution where applicable.

SECTION 3. Definitions

For the purposes of this Code, the following terms shall have the following definitions. All other words and phrases shall have their normal meaning unless further defined herein.

- A. **Appearance of Impropriety.** The perception that wrong-doing or misconduct may have occurred. When a reasonable person could reasonably believe that improper actions have taken or are taking place.
- B. **Board.** The Board of Ethics of the City of Reading.
- C. **Candidate.** Any individual who seeks nomination or election to public office normally decided by vote of the electorate, whether such individual is elected by the electorate or is appointed.
- D. **Charter.** City of Reading Home Rule Charter.

- E. **Code.** City of Reading Code of Ethics.
- F. **Conflict of Interest.** Situation(s) or potential situation(s) in which a public official or employee uses or may use his/her office or employment for the private gain of himself/herself, a member of his/her immediate family or a business of any type with which he/she or a member of his/her immediate family has a material interest.
- G. **Elected Official.** An official elected or appointed to fill a position normally filled by election.
- H. **Employee.** Any individual receiving salary or wages from the City of Reading.
- I. **Immediate Family.** A parent, spouse, living partner, child, brother or sister, natural or adopted.
- J. **Material Interest.** Direct or indirect ownership of more than five percent (5%) of the total assets or capital stock of any business entity.
- K. **Officer.** Investigating Officer appointed by the Board to oversee the investigative procedures on behalf of the Board. The investigating officer need not be a Board member and may be compensated as any other member of the staff.
- L. **Official.** Any elected or appointed paid or unpaid member of the government of the City of Reading.
- M. **Political Activity.** Any activity which promotes the candidacy of any individual seeking elective office, or the advocacy of any political party or position, including but not limited to the circulation of election petitions and the sale or distribution of fund raising items or tickets.
- N. **Private Gain.** Of personal benefit, whether economic, social, or otherwise.
- O. **Violation.** A violation is any activity that is restricted by the ethics provisions of the Charter and/or the Code.

SECTION 4. Statement of Financial Interests

Any official or employee of the City or authorities or boards with decision-making authority shall file with the City Clerk a Statement of Financial Interests for the preceding calendar year by May 1 of each year, as defined by the State Code of Ethics.

Any individual appointed to such a position after May 1 has fifteen working days to file the Statement of Financial Interest. All statements must be made available for public inspection and copying at an amount not to exceed actual costs.

SECTION 5. Disclosure of Confidential Information

City employees and officials often have access to important non-public information regarding the property, operations, policies or affairs of the City. Such information may concern, among other things, employees and officials, real estate transactions, expansion of public facilities, or other City projects. Using or furnishing information that would place employees or recipients in an advantageous position over the general public constitutes a violation of public trust. Anyone who is privy to confidential information may not disclose that information to any private citizen and should disclose it to other public employees only if appropriate and in the normal course of their duties as employees or officials of the City of Reading.

Should an official or employee find himself/herself in any direct or indirect financial interest with any person or other entity proposing to contract with the City that individual must fully disclose said interest and refrain from voting upon or otherwise participating in the transaction or the making of such decision, contract or sale. Violation of this section shall render the contract voidable by the decision-making body or upon review and authority of the Board of Ethics.

SECTION 6. Prohibited Behaviors

A. Conflicts of Interest

1. Employees and officials of the City may not bid on or have a material interest in:
 - a. the furnishing of any materials, supplies or services to be used in the work of the City;
 - b. contracts for the construction of any City facility;

property
the general public at

c. the sale of any property to the City or the purchase of any from the city unless said property is offered to auction or by competitive bid.

2. Employees and officials of the City may not:

privileges

a. use or attempt to use their official position to secure special or exemptions for themselves or others;

professional
require or induce the
acquired by the public officer
official position;

b. accept employment or engage in any business or activity which might reasonably be expected to disclosure of confidential information or employee by reason of their

confidential
position;

c. disclose to others, or use for personal benefit, any information gained by reason of an official

independence or
employee in the performance of

d. accept other employment which might impair the judgment of the public officer or public duty;

from any

e. receive any compensation for official services to the City source other than the City;

| business
officer, director,

f. transact any business in an official capacity with any other entity of which the public officer or employee is an agent, member, or owns a material interest;

create a
and the public interest.

g. have personal investments in any enterprise which will substantial conflict between any private interest

|

3. Outside Employment. City officials or employees may accept, have, or hold any employment or contractual relationship with any individual, partnership, association, corporation (profit or non-profit), utility or other organization, whether public or private, but only if the employment or contractual relationship does not constitute a conflict of interest or impair their efficiency.

4. Officials and employees shall not engage in conduct prohibited under Section 1201(a) of the Charter.

B. Solicitation/Acceptance of Gifts; Rebuttable Presumption

No official or employee shall accept gifts and other things of value in return for a favorable decision or vote (City Charter, Section 1201 (a)). In all but de minimis cases, gifts received must be publicly recorded and submitted to the City Clerk specifying the date received the name and address of the donor, and the value of the gift. Under no circumstance shall officials or employees solicit gifts of any kind. A gift having a value in excess of twenty-five dollars (\$25.00) may not be considered de minimis.

The term gift for the purposes of this Code means any gratuity, benefit, or any other thing of value which is accepted by, paid for, or given to a City employee, elected or appointed officials or by another on their behalf either directly or indirectly without consideration of equal or greater value. The term gift may include, by way of illustration and without limitation to, the following:

1. Preferential rate or terms on a debt, loan, goods, or services which rate is below the customary rate and is not either a government rate available to all other similarly situated government employees or officials or a rate which is available to similarly situated members of the public by virtue of occupation, affiliation, age, religion, sex, or national origin;

2. Transportation, lodging, or parking;
3. Food or beverage, other than that consumed at a single sitting or event; and
4. Membership dues.

City employees or officials shall not solicit or accept gifts, either directly or indirectly, from any person or entity doing business with or under regulation by the City or from the agent or lobbyist of such person or entity except on behalf of the City. The solicitation or acceptance of gifts shall create a rebuttable presumption that the employee knew or should have known that such solicitation or acceptance was based on an understanding that his/her official actions or judgments would thereby be influenced.

C. **Nepotism**

Hiring a relative is a special type of a conflict of interest that should be avoided. No public official or employee shall appoint, hire, advance or advocate the appointing, hiring or advancing of a member of his/her immediate family or household member to a city position, as provided in the City of Reading Personnel Code.

D. **Whistle Blowing**

Employees are expected to expose a violation of the Code of Ethics by any employee or business entity with which the City is doing business if such a violation creates a serious and specific danger to the public's health, safety or welfare.

Employees are expected to expose improper use of public office or any other abuse or neglect on the part of a city employee or public official. An employee with knowledge of actions or activities of ethical concern shall report them to the Board of Ethics. The identity of the employee will be confidential information of the Board of Ethics until a full investigation is initiated.

Retaliation against an employee who reports any violation, abuse or other improper action is strictly prohibited. Any such action will be a violation of the Code of Ethics and subject to the disciplinary and corrective action as ordered by the Board of Ethics.

E. **~~Use of City Property and Personnel~~ *Fraudulent Activity***

~~No personnel, equipment, supplies, facilities, vehicles, or any other property of the City may be used by employees or officials for private use. It is improper and may be unlawful for supervisors to use subordinates for their personal benefit. Reference is made to the City of Reading Personnel Code.~~ ***The City of Reading expects ethical conduct in the performance of all of its activities. The Board of Ethics has the primary responsibility for the detection and prevention of fraud, misappropriation and other inappropriate conduct.***

Fraud generally involves a willful or deliberate act with the intention of obtaining an unauthorized benefit, such as money or resources, by deception or other unethical means. Fraud encompasses an array of irregularities and illegal acts characterized by intentional deception. Fraud, and the terms embezzlement, misappropriation, and other wrongdoings refer to, but are not limited to:

- ***Falsifying of records;***
- ***Forgery or alteration of a check, bank draft, account or any other financial document;***
- ***Forger, alteration, or falsification of information on a timecard;***
- ***Misappropriation of funds, supplies, or other assets;***
- ***Bribery or kickbacks;***
- ***Impropriety in the handling or reporting of money or financial transactions;***
- ***Profiting as a result of insider knowledge of the City of Reading activities;***
- ***Accepting or seeking anything of material value from contractors, vendors or persons providing services/materials to the City of Reading;***
- ***Unauthorized destruction, removal or inappropriate use of records, furniture, fixtures and equipment;***
- ***Making false written or oral statements or representation with respect to City of Reading activities, such as submitting reports that knowingly contain false or misleading statements; and/or***
- ***any similar or related inappropriate conduct***

Each official and employee should be familiar with the types of fraud that might occur within his or her area of responsibility, and be alert for any indication of irregularity. Any fraud that is detected or suspected must be reported immediately to the Board of Ethics. Any investigative activity required will be conducted without regard to the suspected wrongdoer's length of service, position/title or relationship to the City of Reading.

This policy applies to all City of Reading officials, employees, visitors, subcontractors, Boards, Authorities, and Commissions.

F. ~~Political Activities~~ Use of City Property and Personnel

Reference is hereby made to Sections 605(a) and 707 of the Charter and to Section 1.08 of the City of Reading Personnel Code. Said provisions are incorporated herein by reference and made a part hereof. The Board shall have jurisdiction over any matter where the executive branch of the government or City Council of the City of Reading has failed to take appropriate action in enforcing these provisions. ~~No personnel, equipment, supplies, facilities, vehicles, or any other property of the City may be used by employees or officials for private use. It is improper and may be unlawful for supervisors to use subordinates for their personal benefit.~~ Reference is made to the City of Reading Personnel Code.

G. Political Activities

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SECTION 7. Penalties; Restitution

A. Penalties.

Upon any violation of the city provisions, including the undertaking of wrongful acts as described above or in the City of Reading Home Rule Charter, any of the following penalties shall be available to the Ethics Board for imposition:

1. *Admonition.* In compliance with existing personnel practices, collective bargaining agreements and/or statutes, a letter to the respondent, the Mayor, the Managing Director, the Director of the Department in which the respondent is employed, if any, and the complainant, if any, indicating that the respondent has been found to have violated the City provisions;
2. *Public Censure.* In compliance with existing personnel practices, collective bargaining agreements and/or statutes, notification to the respondent, the Mayor, the Managing Director, the Director of the Department in which the respondent is employed, if any, and the complainant, if any, and the news media indicating that a violation of the City provisions took place and that the board strongly disapproves of the actions of the public official or public employee;
3. *Recommendation to the Managing Director of Suspension,* without compensation for a stated period of time not to exceed thirty (30) days, in compliance with existing personnel practices, collective bargaining agreements and/or statutes, with notification to the respondent, the Mayor, the Managing Director, the Director of the Department in which the respondent is employed, if any, and the complainant. If any such suspension is not imposed by the City, a written explanation of such decision shall be provided within five (5) days to the Board;
4. *Recommendation to the Managing Director of Termination* in compliance with existing personnel practices, collective bargaining agreements and/or statutes, with notification going to the respondent, the Managing Director, the Mayor, the Director of the Department in which is respondent is employed, if any, and the complainant, if any. If any such termination is not imposed by the City, a written explanation of such decision shall be provided within five (5) days to the Board;
5. *Referral* to the appropriate authorities for criminal prosecution in cases where a violation of this ordinance is also a violation of federal or state law;
6. *Ineligibility* for holding any office or position within the City for a period of up to five years, as set forth in Section 1202 (b) of the Charter of the City of Reading;
7. *Impose a fine,* not to exceed one thousand dollars (\$1,000.00) per violation;
8. *Imposition of an administrative fine* of not more than one thousand dollars (\$1,000.00) to defray the actual cost and expense of investigating any violation; and

9. Any person who realizes financial gain by way of a violation of any provisions of this ordinance, in addition to any other penalty provided by law or this ordinance shall pay into the Treasury of the City, a sum of money up to the financial gain resulting from the violation. The Board shall determine the amount of financial gain realized; and
10. Any public official, public employee, person, corporation, company or other entity found to have participated in or benefited from a violation of this ordinance, may be barred from participating in business dealings with the City for a period of time not to exceed five (5) years, said period of time to be determined by the Board, in addition to being subject to any other penalty (prescribed by this ordinance) deemed appropriate by the Board.

B. Restitution; Other penalties and remedies.

After finding that an individual has violated any provision of the Charter or this Code within the jurisdiction of the Board as provided for in this Code, the Board may take one or more of the following actions, if appropriate, in addition to penalties described in Section 7(a):

1. Order the subject to make restitution to those incurring damage or injury as a direct result of the actions of the subject that have been adjudicated as a violation of the Code or Charter;
2. Order the subject to cease and desist from engaging in a particular activity that is in violation of the Code, Charter, or any order issued by the Board;
3. Order the subject to take specified action to bring him/her into compliance with Board directives;
4. Refer the matter for review or with specific recommendation for action to law enforcement, regulatory or other authorities with jurisdiction of the matters;
5. Institute appropriate civil or equitable action to enforce the order and decision of the Board; and
6. Recommend to City Council the forfeiture of the office or position held by the subject with the City and recommend that the subject be ineligible to hold any City office or position for a period of up to five (5) years following such decision.

SECTION 8. Advisory Opinions

Upon the written request of any public official or city employee, or without such request should a majority of the Board deem it in the public interest, the Board may render advisory opinions concerning matters of governmental ethics, shall consider questions as to ethical conduct, conflicts of interest and the application of ethical standards set forth in this ordinance, and shall issue an advisory opinion in writing as to any such question. The Board may in its discretion

publish its advisory opinions with any redactions necessary to prevent disclosure of the identity of the person who is the subject of the opinion.

An advisory opinion may be used as a defense in any subsequent investigation or prosecution, provided that the official or employee who sought the opinion did so in good faith and only to the extent material facts were not misrepresented in the request for the opinion.

SECTION 9. Complaint and Investigation Procedure

A. Who May File

Any person may file a complaint about alleged ethics violations of the Reading Code of Ethics or the City Charter. In addition, the Board may initiate proceedings. A person signing a complaint shall:

1. Reasonably believe in the existence of facts upon which the claim is based; and
2. Reasonably believe that the complaint may be valid under the ethics provisions of the Code of Ethics and the City Charter.

B. How to File

Complaints must be submitted on forms provided by the Board. The Board shall make available this form upon request. The complaint shall state the name, job or office held by the alleged violator and a description of the facts that are alleged to constitute a violation. It must contain a notarized signature subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities. The Board shall establish a separate P.O. Box through which to receive complaints. This P.O. Box shall be generally accessible by the investigative officer and/or the secretary, provided that the secretary is not a Board member.

C. Jurisdiction; Preliminary Investigation

1. Each complaint filed with the Board shall be immediately directed to and preliminarily reviewed by an investigating officer appointed by the Board (the "Officer") to determine whether the complaint falls within the jurisdiction of the Board. The aforesaid determinations shall be made within 30 days of the filing of the complaint. If the Officer determines that the Board does not have jurisdiction over the matter underlying the complaint, the complainant will be notified and no further action will be taken with regard to the complaint. If, however, the Officer determines that the complaint falls within the jurisdiction of the Board, the Officer shall authorize a preliminary investigation.
2. The preliminary investigation shall be initiated and accomplished at the sole direction of the Officer. If the Officer, in his/her sole discretion, finds that the violation(s), as alleged in the complaint, would, if proved, constitute a de minimis infraction, he/she may decline to initiate a preliminary investigation and dismiss the complaint, if to do so would be in the best interest of the citizens of the City of Reading.

3. At the onset of the preliminary investigation, the Officer shall notify both the complainant and the subject of the investigation of the filing of the complaint, the nature of the same, and the initiation of a preliminary investigation.
4. The preliminary investigation shall be completed within 60 days of the Officer's finding of jurisdiction.
5. If at any time during the preliminary investigation, an extension is necessary and justified, the Officer shall have additional time in 30-day segments. The Officer shall timely notify both the complainant and the subject of the investigation of each such extension.
6. At the conclusion of the preliminary investigation, the Officer shall determine whether there may exist facts to support the complaint. If the inquiry fails to establish such facts, the Officer shall dismiss the complaint and notify both the complainant and the subject of the complaint of the dismissal of the complaint. If, however, at the conclusion of the preliminary investigation the Officer determines that there may exist facts to support the complaint, the Officer shall authorize a full investigation.

D. Full Investigation

If a preliminary investigation uncovers facts to support the complaint, the Officer shall authorize a full investigation. The complainant and the subject of the investigation shall be notified within three (3) days of the initiation of a full investigation and the subject shall be notified of the identity of the complainant. Until the investigation is concluded or terminated, the Officer will notify both the complainant and the subject of the investigation of the status of the investigation at least every ninety (90) days. Within one hundred eighty (180) days of the initiation of the full investigation, the Officer must either terminate the investigation or issue a findings report to the subject.

E. Findings Report

The findings report shall set forth the pertinent findings of fact as determined by the Officer. The Officer shall deliver the findings of fact to the complainant and the subject of the investigation. The subject of the investigation may, within 30 days of the report, request an evidentiary hearing, unless an extension is obtained from the Officer. When such a request is received by the Officer, the Officer shall immediately notify the Board of the request for a hearing, and the names of the parties involved. The Board shall upon receipt of such notice engage two attorneys: one to represent the facts in support of the complaint; and one to advise the Board in matters related to the evidentiary hearing. The Board solicitor shall not have any involvement in a particular matter once the findings report has been issued.

F. Evidentiary Hearing

1. **Timing.** An evidentiary hearing must be held within forty-five (45) days of the filing of a request for the same.
2. **Evidence.** The subject of the investigation shall have reasonable access to any evidence intended to be used at a hearing. The subject of the

investigation shall have the opportunity to be represented by counsel and to subpoena witnesses, present evidence, cross examine witnesses against him/her, submit argument and shall be entitled to exercise all rights of confrontation and the like afforded him/her by the United States Constitution and the Pennsylvania Constitution.

subject
before

3. **Closed Hearing.** The hearing shall be closed to the public unless the requests an open hearing in writing to the Board at least five (5) days the hearing.

G. Decision by the Board; Final Order.

At the conclusion of the evidentiary hearing, the Board will determine by majority vote of those members presiding whether the evidence supports a finding that the subject of the complaint violated provision(s) of either the Charter or the Code.

Upon reaching a determination on the complaint, the Board shall issue a final order. A copy of said final order shall be immediately delivered to both the complainant and the subject of the complaint.

H. Petition for Reconsideration.

A subject, having been found to have violated a provision of the Charter or Code, may file a petition for reconsideration of the Board's decision. Such petition shall be filed with the Board within ten (10) days of the day the Board issues its final order.

I. Protection of Complainant

No person may be penalized, nor any employee of the City be discharged, suffer change in his/her official rank, grade or compensation, denied a promotion, or threatened, for a good faith filing of a complaint with the Board, or providing information or testifying in any Board proceeding.

SECTION 10. Confidentiality of Board Information

All Board proceedings and records relating to an investigation shall be confidential until a final determination is made by the Board, except as may be required to effect due process. The final order shall become a public record once the subject has exhausted all appeal rights or has failed to timely exercise such rights. All other file material shall remain confidential.

SECTION 11. Wrongful Use of Board of Ethics

The purpose of the Board of Ethics is to endeavor to maintain a high standard of ethical behavior by City employees and officials. This will be most effective when City employees, officials and citizens work together to set and maintain high ethical standards. Complaints directed to the Board must be based on fact. Those filing complaints must have the intent to improve the ethical

climate of the City. Wrongful use of the Code is prohibited and those individuals engaged in such conduct may be subject to penalties as set forth in Section 7.

Wrongful use of the Code of Ethics is defined as either:

1. Filing an unfounded, frivolous or false complaint. A complaint is unfounded, frivolous or false if it is filed in a grossly negligent manner without a basis in law or fact and was made for a purpose other than reporting a violation of this Code. A person has not filed a frivolous complaint if he/she reasonably believes that facts exist to support the claim and either reasonably believes that under those facts the complaint is valid under this Code or acts upon the advice of counsel sought in good faith and given after full disclosure of all relevant facts within his/her knowledge and information.
2. Publicly disclosing or causing to be disclosed information regarding the status of proceedings before the Board and facts underlying a complaint before the Board, including the identity of persons involved and that a complaint has been filed.